# WILLIAM E. HANRAHAN CIRCUIT COURT, BR. 7

STATE OF WISCONSIN

CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN 17 West Main Street Post Office Box 7857 Madison, WI 53707-7857.

Plaintiff,

Case No. 09-CV-

٧.

Unclassified - Civil: 30703

DELL INC. 1 Dell Way Mailstop 8210 Round Rock, Texas 78682,

DELL FINANCIAL SERVICES, L.L.C. Registered Agent: C T Corporation System 8025 Excelsior Drive Suite 200 Madison, Wisconsin 53717,

THIS IS AN AUTHENIUGATED COPY OF THE ORIGINAL DOCUMENT BILLD WITH THE DANE COUNTY ELLIGIK OF CIRCUIT COURT.

Defendants.

CARLO ESOUFDA CLERK OF CIRCUIT COURT

#### COMPLAINT

The State of Wisconsin, by its attorneys, J.B. Van Hollen, Attorney General, and Assistant Attorney General Lara A. Sutherlin on behalf of the Wisconsin Department of Justice, the Department of Agriculture, Trade and Consumer Protection ("DATCP"), and the Department of Financial Institutions ("DFI"), brings this action against the Defendants named above and alleges as follows:

### JURISDICTION AND VENUE

This action is brought pursuant to Wis. Stat. § 100.18(11)(d), to enforce and 1. restrain violations of Wis. Stat. § 100.18(1), and to recover pecuniary losses suffered by Wisconsin consumers.

- 2. This action is also brought pursuant to Wis. Stat. §§ 426.109 and 426.301, to restrain violations of Wis. Stat. chs. 422, 423, and 427.
- 3. Pursuant to Wis. Stat. § 421.401(1), venue is proper in Dane County, Wisconsin because the violations alleged below were committed within Dane County, Wisconsin.

#### **DEFENDANTS**

- 4. Defendant Dell Inc. ("Dell") is incorporated under the laws and statutes of the State of Delaware, with its headquarters located in Round Rock, Texas.
- 5. Defendant Dell Financial Services, L.L.C. ("DFS") is a wholly owned subsidiary of Dell, with its headquarters located in Round Rock, Texas.
- 6. At all times relevant hereto, DFS is a creditor within the definition of Wis. Stat. § 421.301(16), as it regularly engages in consumer credit transactions and/or arranges for the extension of credit by procuring consumer credit from third persons.
- 7. When in this complaint reference is made to any statement, representation, act, or practice of Defendants Dell and DFS, such allegation shall be assumed to mean the Defendants, or their principals, officers, employees, agents, representatives, or other persons acting under their supervision, direction or control.

### **NATURE OF DEFENDANTS' ACTIVITY**

- 8. At all times material to this complaint, Dell transacted business in the State of Wisconsin by advertising, soliciting, selling, and providing technical service for its computers and other electronic products to consumers in the State of Wisconsin.
- 9. At all times material to this complaint, DFS arranged for Dell's customers in the State of Wisconsin to receive an extension of credit in order to purchase Dell's products through a Dell Preferred Account ("DPA"), an open line of credit.

- 10. At all times relevant hereto, a DPA is a credit transaction within the definition of Wis. Stat. § 421.301(10),
- 11. In the course of advertising and selling its products to Wisconsin consumers, Dell has:
  - a. Misrepresented the nature, availability, and terms of customer technical support;
  - b. Misrepresented the nature, availability, and terms of the warranty of its products;
  - c. Improperly billed consumers and failed to correct billing errors after learning of them;
  - d. Misrepresented the actions it would take to address consumer complaints; and
  - e. Misrepresented the nature, availability, and terms of its rebates and failed to provide consumers with advertised rebates in the manner represented.
- 12. In the course of selling, offering financing for, and financing its products to Wisconsin consumers, Dell and DFS have:
  - a. Misrepresented the nature, availability, and terms of financing;
  - b. Failed to adequately disclose all material terms and conditions of financing in its advertising or other communications with consumers;
  - c. Failed to adequately disclose that opening a Dell credit account does not guarantee that the consumer will also qualify for any promotional financing terms that Dell may offer;
  - d. Failed to clearly and conspicuously disclose whether the consumer qualified for certain financing promotions for online orders to the consumer;
  - e. Failed to adequately inform the consumer regarding decisions denying consumer promotional financing to the consumer or that financing would be provided at a rate higher than the promotional rate; and
  - f. Failed to adequately disclose the amount of time the consumer had to reject the offer of credit.

- 13. In the course of financing Dell's products for Wisconsin consumers, DFS has:
- a. Claimed, attempted, or threatened to collect on alleged debts with knowledge or reason to know that the debts are not valid;
- b. Claimed, attempted, or threatened to report consumer's accounts as delinquent to the credit reporting agencies with knowledge or reason to know that the debt was not valid;
- c. Failed to correct erroneous information sent to collection agencies;
- d. Failed to adequately disclose penalties for late payments;
- e. Failed to adequately disclose other occurrences that would trigger enhanced interest, additional fees, charges, or penalties;
- f. Failed to adequately disclose whether subsequent purchases using the Dell credit account would be subject to the same or different terms from any promotional financing terms; and
- g. Failed to adequately inform customers of the requirement of minimum monthly payments on Dell credit accounts.

#### **CAUSES OF ACTION**

## Wisconsin's Unfair Sales Act Count I (Dell) Wis. Stat. § 100.18

- 14. The allegations contained in the above paragraphs are incorporated herein by reference.
- 15. Wisconsin Stat. § 100.18 prohibits any person, firm, corporation or association or agent or employee thereof from publishing or placing before the public an advertisement, announcement, statement or representation with the intent to induce the public to enter into any contract or obligation relating to the purchase of a service or product which contains any assertion, representation, or statement of fact which is untrue, deceptive, or misleading.
  - 16. Defendant Dell violated Wis. Stat. § 100.18(1) by repeatedly making

representations that are untrue, deceptive, or misleading.

### **Wisconsin Consumer Act**

17. The conduct of Defendants Dell and DFS are governed by the Wisconsin Consumer Act.

# Count II (Dell and DFS) Failure to Disclose Credit Terms Wis. Stat. §§ 422.301 and 422.308

- 18. The allegations contained in the above paragraphs are incorporated herein by reference.
- 19. In the course of advertising and extending consumer credit to Wisconsin consumers, Dell and DFS failed to make credit disclosures or include other required information in accordance with Wis. Stat. §§ 422.301 and 422.308 of the Wisconsin Consumer Act, which incorporates the disclosures required by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1604.

# Count III (Dell and DFS) Misrepresentation Wis. Stat. § 423.301

- 20. The allegations contained in the above paragraphs are incorporated herein by reference.
- 21. In the course of advertising and extending consumer credit to Wisconsin consumers, Dell and DFS mislead, deceived, and omitted critical information regarding the terms and conditions of the credit extension in violation of Wis. Stat. § 423.301.

# Count IV (DFS) Debt Collection Wis. Stat. § 427.104

- 22. The allegations contained in the above paragraphs are incorporated herein by reference.
- 23. In the course of extending consumer credit to Wisconsin consumers, DFS disclosed, or threatened to disclose information adversely affecting the customer's reputation for credit worthiness with knowledge or reason to know that the information was false in violation of Wis. Stat. § 427.104.

#### RELIEF REQUESTED

WHEREFORE, Plaintiff, State of Wisconsin, demands relief against Defendants Dell and DFS as follows:

- 1. Enter judgment in favor of the State of Wisconsin and against the Defendants Dell and DFS under Wis. Stat. §§ 100.18, 422.301, 422.308, 423.203, 423.301, and 427.104, and to permanently enjoin Defendants Dell and DFS, their successors, assigns, officers, directors, agents, dealers, and all persons acting or claiming to be acting in their behalf, pursuant to Wis. Stat. §§ 100.18(11)(d) and 426.109, from conducting business operations in violation of Wis. Stat. §§ 100.18, 422.301, 422.308, 423.203, 423.301, and 427.104.
- 2. An order requiring the Defendant Dell to restore affected Wisconsin consumers suffering pecuniary loss because of these violations pursuant to Wis. Stat. § 100.18(11)(d).
- 3. Pursuant to Wis. Stat. § 100.263, order the Defendants Dell and DFS to pay the expenses of investigation and prosecution, including attorney fees, relating to enforcement of Defendants' violations of Wis. Stat. § 100.18.

3. Grant such other relief as the Court deems equitable and proper.

Dated this \_\_\_\_\_ day of January, 2009.

Respectfully submitted,

LARA SUTHERLIN
Assistant Attorney General

State Bar #1057096

Attorney General

Attorneys for Plaintiff

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